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[Global Corruption Report 2007] Informality,Legal Institutions and Social Norms

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11 Informality, legal institutions and social norms

Åse Berit Grødeland[1]

During the socialist era, the main purpose of the judiciary was to protect the socialist order and the rights of the citizens. Transition brought about a dramatic change in the role of the judiciary and also greatly expanded its tasks. Judicial reform has so far been only partially successful. One of the reasons is that it has failed to address the mentality and behaviour of those working within the judiciary, as well as those interacting with it from the outside.

NIBR, in collaboration with Charles University/GfK Prague (Czech Republic), University of Maribor/CATI (Slovenia), Vitosha Research (Bulgaria) and the Romanian Academic Society/ Gallup Romania (Romania), recently completed a three-year project funded by the Research Council of Norway. The project investigated manifestations of informality in these countries in general, and the use of contacts and informal networks, in particular in the judiciary, politics and public procurement. Data were generated by means of elite in-depth interviews (IDIs) and quota-based elite surveys (ES),[2] including 40 IDIs (10 per country) and 300 survey interviews (75 per country) with judges and prosecutors.

Findings

Judges and prosecutors in all countries except Bulgaria think people in their countries are not more law-abiding now than they were during communism. Further, there have been no major changes in the willingness to abide by the law during the last five years (all countries). Laws are primarily violated as a result of transition, and the EU accession process seems to have, if not reinforced, then at least not reduced, this trend. One Romanian respondent noted: 'As a jurist . . . I feel totally helpless in front of this avalanche of laws, especially when it is about adapting to a completely new system that is foreign to every one of us. When I said that Romanians generally respect the laws, I referred to their struggle and disposition to obey common social rules. But in reality (they are) put in the situation of not being able to respect the law . . .'.

Seeking informal outcomes in the judiciary is fairly common in Bulgaria and Romania but less common in the Czech Republic and Slovenia (see fig. 1). Still, the number of justice-sector respondents admitting that they had personally received informal requests, for example to

1 Norwegian Institute for Urban and Regional Research (NIBR), contact: ase.grodeland@nibr.no

2 For a detailed outline of the project structure, definitions and methodology, see Åse Berit Grødeland, 'Informal Networks and Corruption in the Judiciary' Paper presented at World Bank 'New Frontiers of Social Policy' conference, Arusha, Tanzania, 2005.

speed up or delay procedures or verdicts or otherwise influence the outcome of a court case, is rather small (see fig. 2).[3]

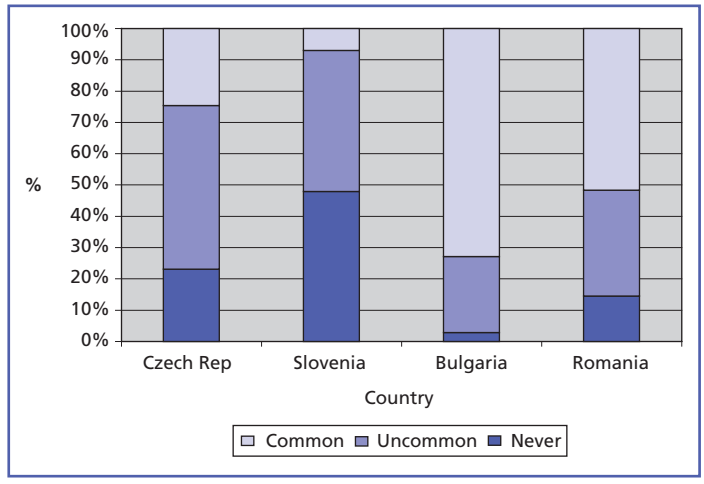


Figure 1: Seeking informal outcomes in the judiciary: the view of the judiciary

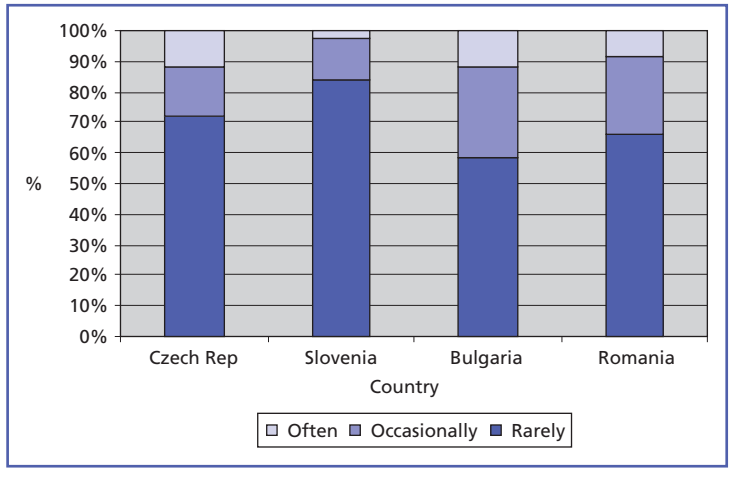


Figure 2: Personal exposure to informal requests

The IDIs suggest that contacts are primarily used to obtain favours: more specifically, to speed up or delay procedures or verdicts (Czech Republic, Slovenia); to seek promotions

3 For all figures, weighted N = 300 (75 respondents per country). Depends/don't know/missing values not included in figures.

(Slovenia); to influence court cases (Bulgaria); or to purchase favours and secure fair trials (Romania). Requests from informal networks are less common. Still, 20% of the Czech, nearly 33% of the Bulgarian and just over 33% of the Romanian respondents who took part in our quantitative survey thought informal networks are used to influence decisions in court (ES).

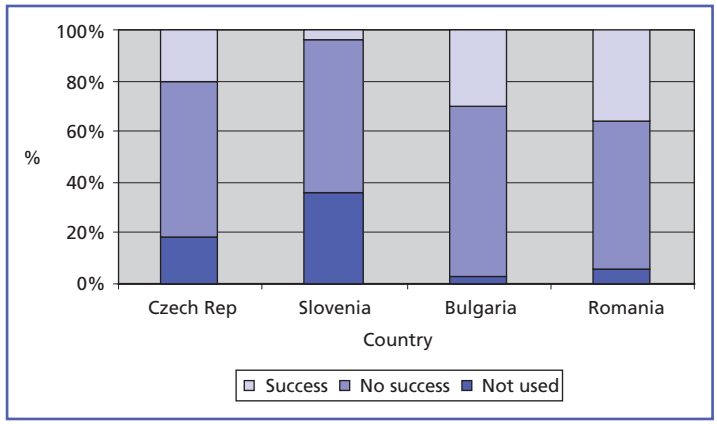


Figure 3: The judiciary on the use of informal networks to influence decisions in court

Requesters representing informal networks often make a point of conveying on whose behalf the request is made. Respondents (IDIs) identified the following networks: networks linking people in the judiciary and politics, a network around the Judges' Union (Czech Republic); networks formed around court presidents (Slovenia); networks composed of friends, former colleagues and people who graduated together and a network of former police officers-turned-lawyers (Bulgaria); a network of magistrates, education-based networks and a network linking professors, lawyers and MPs (Romania).

Respondents (IDIs) reported that a number of different strategies were applied to influence their decisions, ranging from asking or begging (Slovenia), displaying emotions or persisting (Bulgaria) to offering incentives or attempting to coerce or threaten those from whom the requests were made (Bulgaria, Romania). Combinations of strategies were also employed (Bulgaria). Romanian respondents were exposed to internal (by colleagues) as well as external (by the media or political interest) pressure. Respondents in all countries said they would only comply with requests that were within the limits of the law. Still, informal networks were perceived as influential – and as influencing the judiciary in a negative rather than a positive manner (data from survey). Bulgarian and Romanian informal networks are perceived as fairly corrupt.

Conclusions

Law-abidingness – or the lack of it – is closely linked with social norms. Changing such social norms requires a different time perspective as well as measures other than those required to

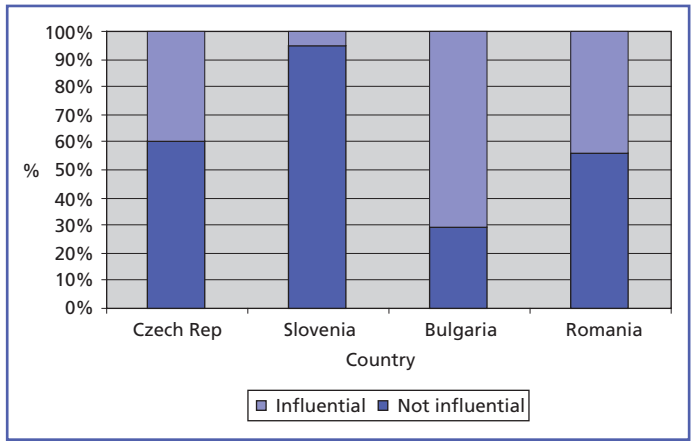


Figure 4: The judiciary on the influence of informal networks in the judiciary

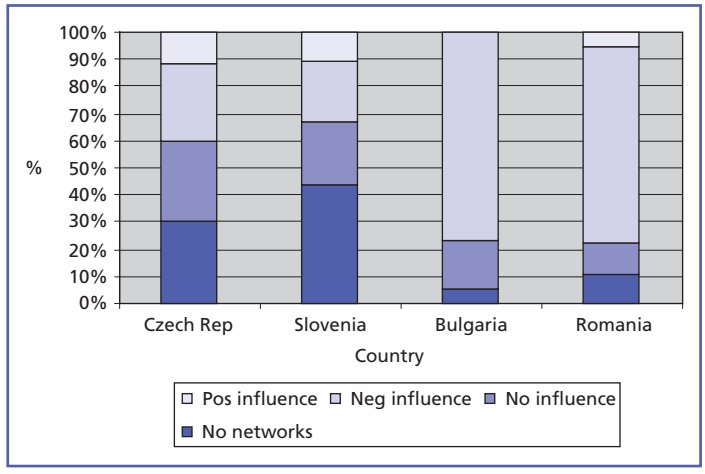


Figure 5: The judiciary on the type of influence informal networks exert in the judiciary

change formal institutions, laws, rules and regulations. The experience of post-communist states to date shows that unless judicial reform targets such social norms, it is likely to be only partially successful. In Bulgaria, the Czech Republic, Romania and Slovenia, reforms have failed to address informal practices carried over from communism. Increasing judiciary independence, improving capacity and enhancing efficiency should reduce some of the scope for informal practices. But such measures need to be accompanied by efforts to educate the general public in the rule of law and to enhance its understanding of the judiciary and how to approach it. More specific confidence building measures are also called for: the judiciary should demonstrate to the general public that everybody is equal before the law.